

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: Regency of Iowa, Inc. Johnson County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2011-WS-04
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TO: Regency of Iowa, Inc
c/o George Cradow President
40 N 4th St
Carbondale, CO 81623

I. SUMMARY

This administrative consent order (order) is entered into between Regency of Iowa, Inc. (Regency) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order concerning the public water supply system serving the residents of the Regency Mobile Home Park (Regency MHP).

Any questions regarding this order should be directed to:

Relating to technical requirements:

Becky Schweite
Environmental Specialist Senior
IDNR Field Office No. 5
401 SW 7th, Suite I
Des Moines, Iowa 50309-4611
Ph: 515/725-0295

Relating to legal issues:

Carrie Schoenebaum
Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building, 502 E. 9th
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Mail payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building, 502 E. 9th St.
Des Moines, Iowa 50319-0034

II. JURISDICTION

The parties agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and

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567 Iowa Administrative Code (IAC) 10(455B), which authorize the Director to assess administrative penalties

III. STATEMENT OF FACTS

The Department sets forth the following statement of facts. Regency neither admits nor denies the statement of facts and enters into this order solely to settle this matter with the Department under the "Order" provision, section "V" of this order.

1. Regency owns and operates the public water supply system serving the residents of its mobile home park located at S 34 T79N, R6W, in Johnson County, Iowa. This property is locally known as 4455 Oak Crest Hill Road SE Iowa City. Regency obtains its water from three wells: well #1 was constructed in 1970 and is 402 feet deep and is equipped with a submersible pump with a pumping capacity of about 60 GPM, well #2 was constructed in 1979 and is 25 feet deep, and well #3 was constructed in 1985 and is 30 feet deep. There are 2 additional wells on the property that are not connected to the water treatment system. Well #4 was constructed in 2007 and is 430 feet deep and is equipped with a submersible pump with a pumping capacity of approximately 130 GPM. In addition there is a sandpoint well in the basement of the public water supply treatment building located next to a 2,000 gallon pressure tank. This well is called the dewatering well and it is used to prevent the basement from flooding. Regency's water supply uses liquid hypochlorination for disinfection. Further, water from well #1 contains radionuclides (Combined Radium 226 + 228) at a level above the maximum contaminant level (MCL). Therefore, water from well #1 must be blended with water from well #2 and #3 to achieve a radium level below the MCL.

2. Regency's public water supply serves the residents of its mobile home park. It provides piped water to the public for human consumption and regularly serves at least 700 persons. This system is classified as a community public water system and is open all year.

3. On June 2, 2003, the Department issued a revised water supply operation permit for this public water supply. The permit included submittal of monthly operation reports (MORs) for blending the wells together to control gross alpha and combined radium.

4. On March 7, 2005, the public water supply was issued a notice of violation (NOV) for non-acute total coliform bacteria for the month of February 2005. This violation required public notice, however, to date the Department has not been notified that such notice was given.

5. On March 28, 2005, the public water supply was issued a NOV for non-acute total coliform bacteria for the month of March 2005. This violation required public notice which was provided on April 8, 2005.

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6. On June 14, 2005, Mark Heiderscheit, an Environmental Specialist with the Department, investigated a complaint regarding the collection point for bacteria samples and chlorine residuals. Following this inspection, on June 21, 2005, a NOV was issued for failure to follow a written bacteria sampling plan, failure to timely submit MORs, failure to monitor chlorine residuals on a daily basis and failure to calculate the maximum residual disinfectant level (MRDL). Chlorine residuals were nearly non-detectable. This NOV required that Regency increase bacterial monitoring from one sample per month to five samples per month, collect samples throughout the distribution system, revise the bacterial sampling plan and timely submit MORs.

7. On October 28, 2005, the Department sent Regency a letter informing it that because it had a positive total coliform bacteria sample a repeat sample must be taken.

8. On November 22, 2005, Regency's water supply operation permit was renewed.

9. On March 30, 2006, a revised water supply operation permit was issued due to lead and copper levels exceeding action levels.

10. On March 30, 2006, a NOV was sent to Regency for violations of lead and copper levels. This violation required public notice. However, the Department's records do not indicate that such notice was given.

11. On August 18, 2006, a NOV was sent to Regency for exceedence of the non-acute radium combined (226, 228) MCL. Public notice of this violation was required. However, the Department's records do not indicate such notice was given.

12. On August 29, 2006, a revised water supply operation permit was issued in response to data submitted to the Department by Regency in June 2006, which indicated that lead levels were exceeded.

13. On November 29, 2006, a NOV was sent to Regency for exceeding its non-acute radium combined (226, 228) MCL. Public notice of this violation was required. On December 26, 2006, public notice was given.

14. On December 14, 2006, Bob Pyle, an Environmental Specialist with the Department, conducted an on site complaint investigation of Regency. While on site he tested the water for chlorine residual in two places and found that the level was 0.0 mg/L. Later, Mr. Pyle spoke to Sam Luckel, Regency's water supply operator. Mr. Luckel explained that the chlorine injector was leaking and had been shut off until repairs could be made. Mr. Pyle explained that timely repairs must be made so that chlorine residuals do not drop below minimum levels of .3 mg/L for free chlorine and 1.5 for total chlorine.

15. On December 19, 2006, a NOV was sent to Regency for the above discussed violations.

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16. On April 5, 2007, a NOV was issued for exceedence of non-acute radium combined MCL. This violation required public notification. Public notification was given on May 5, 2007.

17. On April 9, 2007, a revised water supply operation permit was issued that included a compliance schedule which would result in obtaining compliance with the combined radium (226, 228) MCL. The major focus of the compliance schedule was completion of well drilling and treatment plant upgrades. Well construction was to begin by August 2007, and the total project was to be completed by June 2008.

18. On August 1, 2007, a water supply construction permit was issued to Regency for construction of a new 8 inch 430 foot deep, 135 gallons per minute Devonian/Silurian aquifer well.

19. On August 22, 2007, a NOV was sent to Regency for failure to operate the public water supply system in accordance with its permit, failure to take disciplinary actions against its certified operator and failure to conduct public notice.

20. On December 3, 2007, Ryan Stouder, an Environmental Specialist with the Department, conducted a sanitary survey of Regency. During that inspection numerous violations were documented.

21. On January 4, 2008, the Department sent to Regency an NOV and the recent sanitary survey. The NOV cited the following violations: failure to conduct public notice for non-acute combined radium (226, 228) MCL violations; operation of a public water supply contrary to a condition of its permit; failure to take disciplinary action against its certified public operator; failure to timely submit MORs and failure to monitor chlorine residuals on a daily basis.

22. On January 8, 2008, three NOVs were issued to Regency for exceedence of the combined radium (226, 228) MCL during the second, third and fourth quarters of 2007. Public notice for these violations was required and was provided on February 7, 2008.

23. On March 10, 2008, Regency was issued a NOV for violations of the combined radium (226, 228) MCL during the first quarter of 2008. Public notice was required for this violation and was given on April 8, 2008.

24. On March 18, 2008, Regency was issued a revised water supply operation permit to reduce lead and copper monitoring to annual frequency. This permit included an update to the source entry point monitoring requirements due to recent samples of gross alpha monitoring which showed a value of 21.5 pCi/L which is in greater than the MCL of 15 pCi/L. This permit also contained a compliance schedule that required Regency to complete its plant upgrade project by June 2008.

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25. On April 2, 2008, Regency's engineer, Michael W. Hart of Hart-Frederick Consultants P.C., sent a letter informing the Department that construction of the well had been completed but that the well would not be on line until the improvements to the water treatment system had been completed.

26. On April 15, 2008, a NOV was issued to Regency for failure to comply with provisions of its water supply operation permit. Specifically, Regency was in non-compliance with its total coliform rule bacteria sampling plan, it failed to comply with the disinfection byproduct rule monitoring plan, it failed to submit MORs and failed to monitor chlorine residuals on a daily basis.

27. On June 5, 2008, the Department sent an e-mail to Mr. Hart requesting an update on the well and treatment plant project. Mr. Hart replied via e-mail that well #4 had been constructed but an upper well had not yet been installed, that Regency was ready to submit a construction permit for the raw water line for the proposed treatment facility and obtain bids for this project, and that Regency was back on track with designing the treatment units. Further, Mr. Hart indicated that Regency did not make the necessary repairs to existing wells #2 and #3. Mr. Hart said that Regency did not understand that the two shallow wells were included in the final project completion plans.

28. On June 9, 2008, two NOV's were sent to Regency one for exceeding the radium combined (226, 228) MCL and the second for exceedance of the gross alpha MCL during the second quarter. Public notification of these violations was required. Such notice was given on June 11, 2008.

29. On August 26, 2008, two NOV's were sent to Regency for exceeding the radium combined (226, 228) MCL and the second for exceedance of the gross alpha MCL during the third quarter. Public notification of these violations was required. Such notice was given on September 23, 2008.

30. On September 10, 2008, a NOV was sent to Regency for failure to meet the compliance schedule set forth in its permit. A new well and water treatment plant was to be completed and on line by June 2008. This NOV required that Regency submit a written response detailing the time frame for completion of the project.

31. On September 25, 2008, Mr. Hart sent the Department an e-mail in response to the above NOV. This e-mail stated that on September 24, 2008, Regency had given Mr. Hart the authority to perform the necessary work on wells #2 and #3. Mr. Hart stated that he expected the project to be completed by the spring of 2009.

32. On October 10, 2008, Mr. Hart sent the Department an e-mail reporting that all of the existing wells at Regency were back on line.

33. On October 14, 2008, Regency was sent a revised water supply operation permit. This permit assigned a new source entry point to the water supply.

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34. On April 4, 2009, following a sanitary survey inspection conducted by the Department, a NOV was sent to Regency for violations of conditions of its water supply permit and improper disposal of solid waste. Specifically, MORs had not been timely submitted, chlorine residuals had not been taken on a daily basis as required by the permit and evidence of open dumping of tires, appliances, trash and furniture was observed.

35. Numerous violations were noted during a sanitary survey inspection conducted on July 17, 2009. On August 27, 2009, a NOV was sent to Regency for the following violations: failure to comply with the new well and treatment plant compliance schedule, failure to meet project completion deadlines and failure to comply with conditions of the water supply operation permit. This NOV requested that a written response be submitted to the Department within 30 days detailing how the violations will be addressed and submission of a schedule for completion of the water supply upgrade construction project.

36. On January 8, 2010, a revised water supply operation permit was issued to Regency due to continuous violations of combined radium and gross alpha MCL violations. This permit also reduced the triennial monitoring requirements for lead and copper. An updated compliance schedule was also included with this permit. The project was to be completed and all wells on line by June 30, 2010. To date the project has not been completed.

37. Numerous violations were documented by the Department during a sanitary survey inspection conducted on June 15, 2010. On July 6, 2010, a NOV was sent to Regency citing the following violations: failure to meet the new well and treatment plant compliance schedule, failure to meet the project completion deadline, failure to comply with conditions of the operation permit and improper solid waste disposal. Many of the recommendations made following the above inspection were the same ones made a year earlier. This indicated that Regency made little progress in completing improvements at the water supply.

IV. CONCLUSIONS OF LAW

The Department sets forth the following conclusions of law as follows. Regency neither admits nor denies the conclusions of law and enters into this administrative consent order solely to settle this matter with the Department under the "Order" provision, section "V" of this order.

1. Iowa Code section 455B.172 makes this Department the agency of the state to conduct the public water supply program. Iowa Code section 455B.171 defines a public water supply system as a system for the provision of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. Iowa Code sections 455B.173(3), (5), and (6) authorize the Environmental Protection Commission (Commission) to promulgate rules relating to the

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operation of public water supply systems, to adopt drinking water standards to assure compliance with federal standards adopted pursuant to the federal Safe Drinking Water Act, and to adopt rules relating to monitoring, record keeping, and reporting requirements for any public water supply. The Commission has adopted such rules at 567 IAC chapters 40- 43.

2. 567 IAC 40.2(455B), further defines public water supply by defining "community water system" (CWS) as a public water supply which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, consistent with federal regulations. A "noncommunity water system" is any other public water supply. This facility is a CWS.

3. 567 IAC 41.8 (1) "a" 1 states that "All CWSs must comply with the requirements and maximum contaminant levels for gross alpha particle activity, radium-226, radium-228..." The above stated facts show non-compliance with this provision.

4. 567 IAC 42.1 (1) "a" (3) states "Tier 3 public notice is required for other drinking water violations and situations not included in Tier 1 or Tier 2." The types of violations which are the subject of this order required Tier 3 public notice. The above stated facts indicate non-compliance with this provision.

5. 567 IAC 42.4 "c" states that a public water supply

shall submit to the department a certification that it has fully complied with the public notification rules. The public water system must include with this certification a representative copy of each type of notice distributed, published, posted, or made available to the persons served by the system or to the media.

Such certification was not provided by Regency on numerous occasions as indicated in the above stated facts.

6. 567 IAC 43.1 (7) requires that public water supplies

must respond in writing to significant deficiencies outlined in the sanitary survey report within the time period specified in the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey. At a maximum, the written response must be received within 45 days of receiving the survey report. All systems must take the steps necessary to address significant deficiencies identified in the sanitary survey report that are within the control of the system and its governing body.

The above stated facts show non-compliance with this provision.

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7. 567 IAC 43.2 (5) "b" requires that when

one or more maximum contaminant levels, treatment techniques, designated health advisories, or action levels cannot be met immediately, a compliance schedule for achieving compliance with standards may be made a condition of the permit. A compliance schedule requiring alterations in accordance with the standards for construction in 43.3 (1) and 43.3 (2) may also be included for any supply that, in the opinion of the director, contains a potential hazard.

567 IAC 43.2(2) requires that no person shall operate any public water supply contrary to any condition of its permit.

The above stated facts show non-compliance with this provision since Regency failed to comply with the compliance schedule in its permit.

V. ORDER

THEREFORE, the Department hereby orders and Regency consents to comply with the following:

1. By or before June 30, 2011, Regency shall complete all construction as authorized per Construction Permit No. 2011-0105W issued January 18, 2011; shall have submitted a proposed blend ratio under the supervision of a professional engineer to be approved by the Department's Water Supply Engineering section; and shall implement and continue operations in accordance with the approved blend ratio, and the current and existing water supply operations permit issued to Regency by the Department.
2. Within 30 days of the Director signing this order, Regency shall pay a penalty of \$7,000.00.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty.

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The administrative penalty assessed by this order is based on the violations by this facility that occurred prior to the issuance of this order. It is determined as follows:

a. Economic Benefit. The Department maintains there have been cost savings to the facility in construction costs and management costs by not correcting the violations more timely. Additional costs have been saved due to not correcting the violations at an earlier time. The total economic benefit to this public water supply is estimated to be \$1,000.00. Regency denies any noncompliance and enters into this administrative consent order for settlement purposes only.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This matter involves a potential threat to public health due to the permit violations and failure to correct these violations. Moreover, the Department has notified Regency on numerous occasions of its deficiencies and the steps necessary to achieve compliance. Because of the relative importance of the drinking water program, \$3,000.00 is assessed for this factor, due to multiple violations. Regency denies any noncompliance and enters into this administrative consent order for settlement purposes only.

c. Culpability. The facility was issued a permit and reissued numerous permits with the monitoring requirements and a schedule for correcting the violations. Regency was sent letters notifying the facility of the violations. The completion date for construction established by the numerous permits has not been met. The facility has been given ample time to comply. Therefore, \$3,000.00 is assessed for this factor. Regency denies any noncompliance and enters into this administrative consent order for settlement purposes only.

VII. WAIVER OF APPEAL RIGHTS

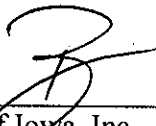
Iowa Code section 455B.175, and 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Regency. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section V of this order

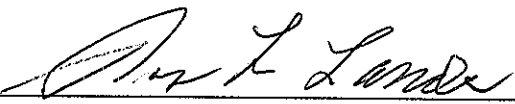
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constitutes full satisfaction of all requirements pertaining to the specific violations described in this order.



Regency of Iowa, Inc.
PETER JAKOS V.P.

Dated this 1st day of
JUNE, 2011



Roger L. Lande, Director
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 9th day of
June, 2011

Water Supply Operations Section, Field Office 6 Ryan Stouder, Carrie Schoenebaum-
Legal Services, U.S.E.P.A. Region VII, II.B.2.b, II.B.2.c(6), II.B.2.d.